

**REMARKS**

The Pending Claims:

Claims 46-47 and 49-51 are pending and under active consideration. Claims 1-45 and 48 are canceled. The pending claims are directed to compositions comprising a neuronal sodium channel antagonist of formula Ia at about 20% on a weight by volume basis and amitraz.

The Amendment:

Claims 49-51 are newly added and fully supported by the application as filed. In particular, support for the new claims is found in the detailed description, Examples 1-4 and original claims 23, 40, 41 and 45, as filed.

Amendment of the claims is made without prejudice and without intent to abandon any originally claimed subject matter. Applicant expressly reserves the right to file one or more continuing applications hereof containing the canceled or unamended claims. Entry of the claim amendments is respectfully requested.

The Office Action:

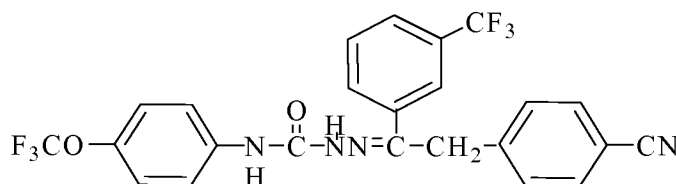
Claims 46 and 47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Treacy et al (WO 00/54591) in view of Hacket et al. (US 6,955,818) and Petras (5,965,137).

Rejection Under 35 U.S.C. § 103

Claims 46 and 47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Treacy et al (WO 00/54591) in view of Hacket et al. (US 6,955,818) and Petras (5,965,137). Applicants respectfully traverse this rejection based on the following.

To establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

The claims are directed to ectoparasitidal compositions which comprises amitraz, a pharmaceutically acceptable carrier and about 20% w/v of a compound of the formula:



(Ia)

Treacy discloses a compound of formula Ia and/or amitraz present at concentrations in parts per million (ppm). The present claims have parasitidal compounds present in much higher concentrations than those in Treacy. The secondary references fail to disclose the claimed compositions period, let alone a concentration as presently claimed. Accordingly, all the limitations are not present in the cited art.

Nonetheless, according to the Office Action, “[g]iven the efficacy of Treacy, one of ordinary skill in the art would find it obvious and within their capability to modify an ectoparasitidal composition in order to optimize the range of parasites affected, the ability to provide a safe and less irritating dermal composition while still having high efficacy, stability and longevity, that’s what the secondary references teach and it is well within the purview of one in the art to recognize as an advantageous combination of activities.” Page 2, 4<sup>th</sup> paragraph.

The references simply do not support that conclusion. Particularly, the references fail to show that an increase in parasitidal concentration of a composition results in an optimized range of parasites affected, increased safety and reduced dermal irritation. Furthermore, it is unclear why that result would be expected from amitraz (a difficult compound to formulate) in conjunction with a relatively unknown insecticidal compound (at the time of filing). If the rejection is maintained, Applicants respectfully request that support be made of record for the conclusion that concentrated

insecticidal compositions are more safe, less irritating and optimized for parasitocidal effectiveness than dilute versions thereof.

Furthermore, the secondary references do not describe the presently claimed concentration of about 20% w/v (formula Ia) and/or 10% w/v (amitraz) for the active parasitocidal compositions. Instead, the references have a very broad range from which any number of parasitocidal compositions can be used (none of which include the claimed compounds). If one were to follow the rule articulated in the Office Action (i.e. greater concentrations are necessarily better), the natural outcome would be to select for the highest possible concentration, not one of about 20% w/v for formula Ia and/or 10% w/v for amitraz. The only basis on which the rejection can be founded involves hindsight reconstruction of the present claims.

Notwithstanding, assuming *arguendo* that a *prima facie* case of obviousness was established; obviousness based on "optimization" can be rebutted by a showing of unexpected results (see M.P.E.P. § 2144.05(III)). As evidenced in Examples 1-4 (Tables I-IV), the present claimed compositions are extremely efficacious for the topical treatment of parasite infestations on animals, a result that is in no way expected by the prior art. Notably, in Table 4, the claimed composition (row 1) showed even greater efficacy in tick prevention than the successful commercial products: Frontline® and Advantage® over a 4 week study. The composition also showed superior results to Advantage® in a flea-based study (Table 3). Since parasites can develop resistance to known commercial parasitocides, the development of new treatments is continually needed. The fact that the presently claimed compositions show in some cases superior results to existing and extremely successful commercial products is an indication of the significance of Applicant's discovery. This is in no way expected from the cited references.

Furthermore, pharmaceutically acceptable compositions with a high concentration of metaflumizone and amitraz are particularly difficult to formulate, especially because amitraz is a fairly unstable agent in the presence of particular solvents including those presented in the secondary references (see Talanta, Volume 48, Issue 1, 5 January 1999, Pages 189-199). It was only after considerable formulation studies that viable concentrated solutions of amitraz and metaflumizone as presently claimed were obtained.

In view of the foregoing, Applicants believe that Examiner's rejections under 35 U.S.C. § 103(a) have been overcome. Applicants acknowledge and appreciate the Examiner's thorough review of the application and submit that now all of the claims of the present application are in condition for allowance. Applicants respectfully request Examiner to enter the above amendments, consider the above remarks, withdraw the rejections and allow the application.

Favorable treatment of the application is earnestly solicited. If it is believed that an interview would expedite prosecution of the application, the Examiner is encouraged to call the undersigned at (973) 660-6615.

Respectfully submitted,

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